

# **COMPLIANCE AUDIT REPORT**

## **STATE OF MAINE WORKERS' COMPENSATION BOARD**



## **OLD REPUBLIC INSURANCE March 12, 2002**

### **Monitoring, Audit & Enforcement (MAE) Division**

Paul Dionne  
Executive Director

Steven P. Minkowsky  
Deputy Director of Benefits Administration

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## SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined 25 claim files for the period under examination (2000) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the 25 claim files audited, there were 8 “lost time” claims, 16 “medical only” claims and 1 “incident only”<sup>1</sup> claims.

The following seven (7) third party administrators (TPA's) were contracted by Old Republic Insurance Company (ORI) to handle their WCB claims:

1. Acadia Insurance Company
2. Gallagher Bassett - Portland ME
3. Gallagher Bassett - Braintree MA
4. Gates McDonald
5. Helmsman Management Services
6. Ryder Claim Services
7. Cunningham Lindsey

Of the seven TPAs only three appeared in the audit sample.

Our audit revealed:

- Eight (8) “lost time” claims were identified from the audit sample as reportable to the WCB:
  - Three (3) of the eight lost time claims had a First Report (WCB-1) form filed timely with the WCB.
  - Two (2) of the eight lost time claims had a late-filed First Report (WCB-1) with the WCB.
  - Three (3) of the eight lost time claims did not have a filed First Report (WCB-1) with the WCB.
- Of the eight (8) “lost time” claims identified there was an overpayment of \$583.58 in aggregate identified. Due to a lack of response from Gates McDonald the accuracy of indemnity payments could not be determined for two claims.
  - Three (3) were compensable. The (3) three compensable claims were not handled correctly.
    - ✓ One of the three compensable claims was not handled correctly because of a miscalculation of the number of days of lost time, which resulted in an overpayment.

## SUMMARY (continued)

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<sup>1</sup> “Incident only” Claims incur no medical expenses and less than a day of lost time.

- ✓ One of the three compensable claims had a Notice of Controversy (NOC) WCB – 9 filed untimely.
  - ✓ One of the three compensable claims was paid 186 days late.
  - Five (5) were not compensable
- The most significant problem was found to be form filing. Based on our audit sample, the best compliance rate was 33.34%, this was noted for the Memorandum of Payment form (WCB-3). This does not meet WCB's performance benchmark of 75%. The next best rate was 12% this was noted for the Employer's first Report of Occupation Injury or Disease (WCB-1). The other forms' compliance rates were at zero. It appears that the TPA's that ORI uses to adjust their claims do not have an effective system for generating these forms and filing them in a timely manner. This division would recommend that Old Republic confront this issue in the future with their TPAs.
  - The initial indemnity payment benefit compliance rate is at 33.33%, which does not meet the Maine Workers Compensation Boards' performance benchmark of 80%.
  - This audit became cumbersome and lengthy do to the fact that ORI did not have a complete list of their TPA's or the claims that they handle for them. In addition, that list that was provided was inaccurate. The auditor was obliged to contact each of the (seven) TPA's to request a claimant list.
  - Gate McDonald has not to date complied with the Maine WCB Audit Division's requests.

## PENALTIES

### ◆ Section 205(3), M.R.S.A. Penalties (payable to injured employees)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Harold Carter vs. American Red Cross Date of Injury: 06/16/00 Gates McDonald's File # A007002 WCB File # 19054	The first payment to injured employee was made 186 days late, due date 06/30/00 however payment was made 1/2/01.	\$1,500.00
<hr/> <b>Total Penalties to Injured Employees</b>		<b>\$1,500.00</b>

## **PENALTIES (Continued)**

### **♦ Penalties Allowed by Law (Payable to the Workers' Compensation Board)**

#### **39-A M.R.S.A. Sec. 359(2)**

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

#### **39-A M.R.S.A. Sec. 360(1)(A)**

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

- Nine (9) forms were not filed (\$900.00).

#### **39-A M.R.S.A. Sec. 360(1)(B)**

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

- Seven (7) forms were filed late (\$700.00).

#### **39-A M.R.S.A. Sec. 360(2)**

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

**INDEMNITY BENEFITS**  
(As of 3/26/02)

**A. Prompt Initial Payment of Benefits**

<b>2000</b>			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	1	33.33%
Mailed >185 days /Not Mailed			2	66.67%
Total			3	100.00%

**B. Prompt Subsequent Payment of Benefits**

<b>2000</b>			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	8	61.54%
8-14	Days		4	30.77%
15 +	Days		1	7.69%
Total Due			13	100.00%

**C. Accuracy of Average Weekly Wage \***

<b>2000</b>			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	1	33.33%
Incorrect/Unknown			2	66.67%
Total			3	100.00%

**D. Accuracy of Weekly Benefit Rate \***

<b>2000</b>			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	1	33.33%
Incorrect/Unknown			2	66.67%
Total			3	100.00%

\* Because not all forms were filed as requested the accuracy for two claims could not be determined.

**FORM FILING**  
**(As of 3/26/02)**

**A. First Report (WCB-1)**

	<b>2000</b>	
	Number	Percent
Filed	3	12.00%
Filed Late	2	8.00%
Not Filed	3	12.00%
Not Required	17	68.00%
Total	100	100.00%

**B. Wage Statement (WCB-2)**

	<b>2000</b>	
	Number	Percent
Received at the Board:		
Filed <b>Compliant</b>	0	00.00%
Filed Late	1	33.33%
Not Filed	2	66.67%
Total	3	100.00%

**C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)**

	<b>2000</b>	
	Number	Percent
Received at the Board:		
Filed <b>Compliant</b>	0	0.00%
Filed Late	1	33.33%
Not Filed	2	66.67%
Total	3	100.00%

**D. Memorandum of Payment (WCB-3)**

	<b>2000</b>	
	Number	Percent
Received at the Board:		
Filed <b>Compliant</b>	1	33.34%
Filed Late	1	33.33%
Not Filed	1	33.33%
Total	3	100.00%



**FORM FILING (Continued)**  
**(As of 3/26/02)**

**E. Notice of Controversy (WCB-9)**

		<b>2000</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	0	0.00%
Filed Late		1	100.00%
Total		1	100.00%

**F. Statement of Compensation Paid (WCB-11)**

		<b>2000</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	0	0.00%
Filed late		1	50.00%
Not Filed		1	50.00%
Total		2	100.00%